

REMARKS

Claims 1 and 3 through 21 are pending. Claim 2 has been cancelled. In the present Office Action, claims 1-5 and 11-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Ross et al. (5,318,543). Claims 1-7, 11, and 19-21 were rejected under 35 U.S.C. §102(b) as being anticipated by Kalinski (5,311,990). Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Ross et al. (5,318,543). Claims 1-9, 11-15, and 17-21 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 10-16, and 18-21 of copending Application Serial No. 10/085,630. Claims 1-9, 11-15, and 17-21 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 10-16, and 18-21 of copending Application Serial No. 10/085,417. Claim 16 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application Serial No. 10/085,630 in view of Ross et al (5,318,543). Claim 16 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/085,417 in view of Ross et al (5,318,543).

In paragraph 6 of the Office Action, claims 8-10 are indicated as distinguishing over the prior art. Thus, the only objection to claims 8 and 9 are the obviousness double patenting rejections noted above. In paragraph 12, Claim 10 was objected to as being dependent upon a rejected base claim, but deemed allowable by the Examiner if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

A properly executed Terminal Disclaimer is being filed herewith to overcome the various double-patenting rejections noted in paragraphs 7 through 11 of the Office Action. It is to be understood that the Terminal Disclaimer is being submitted merely to expedite prosecution of the present application, and in no way should be taken as acquiescence in the Examiner's position that a Terminal Disclaimer is required, or that the claims of the present application are obvious in view of the co-pending related applications alone or in combination with any other reference.

Applicants respectfully submit that claim 1 as amended and presented herein defines over the cited references, particularly Ross '543 and Kalinski '990. Claim 1 is amended to essentially include the limitations of former claim 2, and calls for the planar surfaces to include a first planar surface having at least one recess disposed therein, a second planar surface comprising at least one recess disposed therein with the second planar surface being offset from the first planar surface, and a third planar surface offset from the first planar surface and having at least one recess disposed therein. The planar surfaces are arranged such each surface is offset vertically with respect to at least one other planar surface and the respective recesses are positioned within the tray such that articles in at least one upper planar surface must be removed from the tray prior to access being provided to articles in at least one lower planar surface. It is respectfully submitted that this unique combination of elements is not present in either of Ross '543 or Kalinski '990.

Referring to Ross '543, at most, there are two planar surfaces with recesses disposed therein. As can be readily seen in Fig. 3, the tray has a first planar surface having various recesses defined therein to house the instruments, such as instruments 15, 23, 16, and so forth. A recess is also provided to house the sealed pouch 20. The

sealed pouch 20 rests on a second planar surface in which recesses are defined to house the syringes 27 and 17. However, there are no additional planar surfaces in the tray vertically offset from the planar surfaces just described in which additional recesses are defined for surgical articles. The lip around the tray cannot reasonably be considered as a planar surface having a recess defined therein for receipt of an article. Accordingly, applicants respectfully submit that claim 1 defines over Ross '543.

Referring to Figs. 1 and 5 of Kalinski '990, it can be readily seen that the tray 80 includes a lip 101. A ridge 95 is disposed below the lip 101 and supports the intermediate tray 55, as particularly seen in Fig. 5. However, the surface 101 is not a planar surface having article recesses defined therein. The intermediate tray 55 is not a surgical article resting in a recess shaped for the particular surgical article. Similarly, the surface defined by the circumferential ridge 95 is not a planar surface having a surgical article recess defined therein, but simply defines a surface upon which the intermediate tray 55 rests. The only surface in the tray of Kalinski '990 having surgical article recesses defined therein is the surface 85 noted by the Examiner. Accordingly, applicants respectfully submit that claim 1 defines over Kalinski '990.

Claim 3 depends from claim 1 and is allowable for at least the reasons claim 1 is allowable. In addition, claim 3 is amended to call for a removable container that rests upon at least a portion of the first planar surface while providing access to at least one of the recesses defined in the first planar surface and covering at least one recess in the second planar surface. Such limitations are clearly not present in Kalinski '990.

Claim 4 depends from claim 3 and further defines the combination thereof, and is thus also allowable.

Claims 5 through 7 depend directly or indirectly from claim 1 and are thus allowable for at least the reasons set forth above with respect to claim 1.

Claim 8 has been amended to be placed in independent form and is thus allowable upon consideration of the Terminal Disclaimer filed herewith. Claims 9 and 10 depend from claim 8 and are thus also allowable.

Claim 11 calls for the tray to include first, second, and third planar surfaces having at least one recess disposed therein, wherein the planar surfaces are vertically offset from each other. Claim 11 also calls for a container to fit at least partially within the tray so as to rest upon one of the planar surfaces while leaving at least one of the recesses in the respective planar surface exposed. This unique combination of elements defines over the cited references.

With respect to Ross '543, the arguments presented above with respect to claim 1 apply equally to claim 11 in that Ross '543 does not include first, second, and third planar surfaces having respective surgical article recesses defined therein. With respect to Kalinski '990, the arguments set forth above with respect to claim 1 also apply. In addition, the intermediate tray 55 in the device of Kalinski '990 completely covers all of the article recesses defined in surface 85.

Accordingly, applicants respectfully submit that claim 11 is also allowable over the cited references. Claims 12 through 21 depend directly or indirectly from claim 11 and are allowable for at least the reasons claim 11 is allowable. The Examiner's attention is also drawn particularly to claim 14 wherein the percutaneous endoscopic gastrostomy tube comprises a bumper, and the bumper is disposed within at least one recess in the second planar surface. There is no surgical article disclosed in either of


the cited references wherein a gastrostomy tube comprises a bumper at the end thereof, wherein the bumper is disposed in its own recess.

It is respectfully submitted that the remaining dependent claims 12, 13, and 15 through 21 also contain additional patentably distinguishing features.

Accordingly, with the present Amendment, applicants respectfully submit that all pending claims are allowable, and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at his convenience to resolve any remaining issues.

Respectfully submitted,

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